IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.08.2006

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Appeal No.3807 of 2002

The Special Tahsildar,
(Land Acquisition)-IV,
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai-35. … Appellant (Respondent)

Vs.

R.Sunantha … Respondent (Petitioner)

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 08.07.2002 made in W.P. No.21128 of 2002. W.P.No.21128/2000 filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records of the respondent pertaining to Rc.No.3493/93/R2 dated 13.2.2002 quash the same and directing the respondent to pay the entire compensation any to the petitioner.

For Appellant : Mr.P.Wilson, Special Government Pleader

For Respondent : Mr.M.Rajaraman

J U D G M E N T

P.SATHASIVAM, J.

Aggrieved by the order of the learned single Judge, dated 08.07.2002, made in W.P. No.21128 of 2002, the Special Tahsildar (Land Acquisition)-IV, Tamil Nadu Housing Board Scheme, Nandanam, Chennai-35, has filed the above Writ Appeal.

2. Heard Mr.P.Wilson, learned Special Government Pleader for appellant and Mr.M.Rajaraman, learned counsel for respondent.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The respondent herein filed W.P. No.21128 of 2002 for the issuance of a writ of certiorarified mandamus to call for the records of the Special Tahsildar (Land Acquisition)-IV, Tamil Nadu Housing Board Scheme, Chennai-35, pertaining to his letter RC No.3493/93/E2, dated 13.02.2002, in and by which, the said Officer informed her that though orders for re-determination of compensation had been passed on 01.11.1995 and the compensation amount was also received from the requisitioning body, in view of the fact that as against the Judgement in LAOP No.12 of 1989, the Government has filed appeal and the same is pending, the compensation amount will be paid to her only after the disposal of the said Appeal.

4. The respondent's father Duraisamy Naidu (since deceased) owned lands of an extent of 4 acres and 75 cents in Survey Nos.77/2 etc. in Tirur Village, Thiruvallur Taluk. The land was acquired for implementation of a Housing Scheme. The Special Tahsildar passed award Nos.1 to 6 of 1987 on different dates, fixing the compensation at the rate of Rs.100/- per cent. Her father had received the award amount under protest but did not apply for reference under Section 18 of the Act. But, reference was made in respect of certain lands covered by the same award to the Sub Court, Tiruvallur, on 28.04.1993 and the learned Sub Judge fixed the compensation at the rate of Rs.700/- per cent. After coming to know of the same, the petitioner's father filed an Application on 16.07.1993 under Section 28-A of the Land Acquisition Act, requesting the Special Tahsildar to re-determine the amount of compensation as awarded by the learned Sub Judge. After enquiry, the amount was re-determined on 01.11.1995 and on receipt of the amount from the requisitioning body/Housing Board, the same had been kept in deposit with State Bank of India, Saidapet. In the meanwhile, Duraisami Naidu died and the Writ Petitioner R.Sugantha/the only surviving legal heir pursued the matter and sent a letter, requesting the Land Acquisition Officer to send the amount as determined by way of cheque. After correspondence, the Land Acquisition Officer sent a letter on 13.2.2002 stating that the re-determined amount will be paid to her only after the disposal of the appeal filed against the judgment and decree in LAOP No.12 of 1989 on the file of the Subordinate Judge, which necessitated her to file W.P. No.21128 of 2002.

5. The learned single Judge, even after recording the fact that the Government had filed appeal and the same is pending, by observing that, in the event of success in the appeal, the Special Tahsildar can seek for recovery in the manner known to law, directed him to disburse the determined compensation payable to the Writ Petitioner within a period of one month from the date of receipt of copy of the order. Questioning the same, the Special Tahsildar has filed the present Appeal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. Learned Special Government Pleader, by drawing our attention to the First Appeal filed against LAOP No.12 of 1989 and the pendency of the same as on date, would submit that it is but proper on the part of the learned Judge to have clarified that depending on the outcome in the appeal filed by the State, the amount re-determined would be disbursed, and that the learned Judge committed an error in issuing a direction for disbursal of the amount.

7. Section-28.A of the Land Acquisition Act, 1894, makes it clear that the persons interested in other lands covered by the same Notification under Section 4(1), on aggrieved by the award of the Collector, even in the absence of an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court, require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court. In other words, if there is an award by the competent court in excess of the amount awarded by the Collector under Section-11, other persons forming part of the same Notification are also entitled to the same compensation as fixed by the Court provided if written application is made within three months from the date of the award of the Court.

8. The particulars furnished show that though the Government preferred an appeal against the award in LAOP No.12 of 1989, the same was dismissed on the ground of delay and, on further appeal, the Supreme Court condoned the delay, due to which, the appeal of the Government is numbered and pending along with other appeals before this Court. In such circumstances, the appeal being continuation of the award, it is but proper to disburse the re-determined compensation only on the basis of the final judgment and decree of the appellate court. In this regard, it is useful to refer to the Judgement of the Supreme Court reported in 2006 (4) SCC 538 (Union of India vs. Munshi Ram), wherein, their Lordships have held thus:-

> " *We are of the view that the Union of India is right in its submission that the amount payable under Section 28-A of the Act is the amount which is finally payable by way of compensation to the owners of the land who challenged the award of the Collector and claimed reference under Section 18 of the Act. The said provision seeks to confer the benefit of enhanced compensation even on those owners who did not seek a reference under Section 18.*

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

It cannot be that those who secure a certain benefit by reason of others getting such benefit should retain that benefit, even though the others on the basis of whose claim compensation was enhanced are deprived of the enhanced compensation to an extent. This would be rather inequitable and unfair. Moreover, even if it be that the compensation payable to claimants who have applied under Section 28-A of the Act, is the enhanced compensation decreed by the Reference Court, we must understand the decree to mean the decree of the Reference Court as modified in appeal by the higher courts. Otherwise, an incongruous position may emerge that a person who did not challenge the award of the Collector and did not claim a reference under Section 18 of the Act would get a higher compensation than one who challenged the award of the Collector and claimed a reference, but in whose case a higher compensation determined by the Reference Court was subsequently reduced by the superior court. There can be no dispute that those claiming higher compensation and claiming reference under Section 18 of the act are bound by the decree as modified by the superior court in appeal. The principle of restitution must apply to them. For the same reason, the same consequence must visit others who have been given the benefit of enhanced compensation pursuant to the decree passed in reference proceeding on the application of others. "

9. It is clear from the above decision that though Section 28-A of the Act confers the benefit of enhanced compensation even on those owners who did not seek reference under Section 18, the same is subject to the orders passed in the appellate court. In other words, those who are claiming higher compensation and seeking reference under Section 18 of the Act are bound by the decree as modified by the superior court in appeal. This relevant aspect was not considered by the learned Judge, thereby committed an error in issuing a positive direction for disbursal of the amount. Hence, such direction cannot stand. Though even at the time of admission, the writ appeal was ordered to be heard along with the appeal filed by the State, inasmuch as several connected appeals are pending, we are constrained to dispose of the Writ Appeal as follows,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The order of the learned single Judge dated 08.07.2002 is set aside. The respondent herein is entitled to re-determined compensation on the basis of the final Judgment and decree of the appellate court.

The Writ Appeal is allowed on the above terms. No costs.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Special Tahsildar,
(Land Acquisition)-IV,
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai-35.

1 cc to Government Pleader, SR.36210
1 cc to Mr.N.Nallappan, Advocate, SR.

tej (co)

dv/19.8.06

W.A. No.3807 of 2002.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/